



December 9, 1999

Ms. Rita Rodriguez
First Assistant City Attorney
1 Civic Center Plaza - 9th Floor
El Paso, Texas 79901-1196

OR99-3578

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130631.

The City of El Paso (the "city") received a request for records relating to an arbitration between the city and two terminated police officers. You indicate that you have released responsive information requested in Item 1 of the request, and that there is no existing information related to Items 3 and 4. Additionally, you indicate that you have released a contract for services in response to Item 2. You claim that the remaining information responsive to Item 2 is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You assert that section 552.103 of the Government Code excepts from disclosure the requested information. The Seventy-sixth Legislature amended section 552.103 of the Government Code to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information “relates” to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.).

You contend that the requested information relates to the appeal to the city’s civil service board of the city’s decision to terminate two police officers. You submitted to this office for review two letters indicating that the terminated police officers are appealing their terminations to the city’s civil service commission. These appeals, you argue, are considered litigation for purposes of section 552.103. This office has determined that a contested case under the Administrative Procedure Act (the “APA”), Government Code chapter 2001, constitutes “litigation.” See Open Records Decision Nos. 588 (1991) (former State Board of Insurance proceeding), 301 (1982) (hearing before Public Utilities Commission). The city’s civil service hearings are not subject to the APA, but to the city’s civil service board rules and regulations. Accordingly, we conclude that the city has not established that the requested information relates to pending or reasonably anticipated litigation. Therefore, the highlighted information in Exhibit D may not be withheld under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/nc

Ref: ID# 130631

Encl. Submitted documents

cc: Mr. Chris McGill
El Paso Municipal Police Officers' Association
747 E. San Antonio Avenue, Suite 103
El Paso, Texas 79901
(w/o enclosures)